

4-10-91 FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Truth-in-Billing
and
Billing Format

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FEDERAL COMMUNICATIONS COMMISSION)
OFFICE OF THE SECRETARY)

CC Docket No. 98-170

Petition for Temporary, Limited Waiver

Hardy Telecommunications, Inc. ("Hardy") and Spruce Knob Seneca Rocks Telephone, Inc. ("Spruce Knob")(collectively the "Petitioners"),¹ by counsel, hereby seek temporary, limited waiver of the Truth-in-Billing ("TIB") requirements established by the Federal Communications Commission ("Commission" or "FCC") in its First Report and Order and Further Notice of Proposed Rulemaking in the above-captioned matter.² Specifically, the Petitioners seek temporary waiver of the requirements of Section 64.2401(a)(2) regarding separating charges by service provider (the "TIB Separate Provider Requirement") and Section 64.2401(d) regarding disclosure of inquiry contacts (the "TIB Inquiry Contact

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¹ Attachment A contains the declaration of Dwight E. Welch, General Manager of Hardy and the declaration of Bobby Armistead, General Manager of Spruce Knob. The declarations bear facsimile signatures. The original signed declarations will be filed upon receipt by counsel.

² In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 99-72, released May 11, 1999, 64 Fed. Reg. 34488 (June 25, 1999)("TIB Order"); Errata, CC Docket No. 98-170, DA 99-2092, released October 6, 1999.

Requirement")(collectively, the "TIB Requirements").³ The Petitioners seek this waiver until April 1, 2000.

The Petitioners, which are not a member of the United States Telecom Association ("USTA"), recognize that a pending Petition filed by USTA⁴ seeks similar relief for USTA member companies, and would not otherwise cover the Petitioners unless the relief sought was applied to all carriers as USTA has suggested.⁵ Moreover, the Petitioners recognize that a pending Joint Petition filed by the National Exchange Carrier Association, Inc., the National Telephone Cooperative Association (whose membership includes the Petitioners), and the Organization for the Promotion and Advancement of Small Telecommunications Companies, Inc. (collectively the "Associations") also seeks similar relief for their member companies. Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, the Petitioners request a waiver of the TIB Requirements until April 1, 2000.

³ In pertinent part, 47 C.F.R. § 64.2401(a)(2) states that "[w]here charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider. . . ." 47 C.F.R. § 64.2401(d) states, in turn, that:

Telephone bills must contain clear and conspicuous disclosure of any information that the customer may need to make inquiries about, or contest charges, on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. Each carrier must make its business address available upon request to consumers through its toll-free number.

⁴ See Public Notice, DA 99-1616, released August 13, 1999.

⁵ See Reply Comments of USTA, CC Docket No. 98-170, filed September 10, 1999 at 2.

Until the requested waiver expires, the Petitioners will continue to work with their billing software vendor in order to have the necessary software changes made and tested in order to comply with the TIB Requirements. Moreover, even after the waiver expires, each of the Petitioner's customer representatives will continue to provide assistance to customers with questions concerning charges from particular carriers. The Petitioners respectfully submit that these actions will ensure that the underlying public interest objectives of the TIB Requirements will be advanced during the time that the requested waiver is in effect.

I. Background

Hardy provides exchange and exchange access services to approximately 3,000 lines in West Virginia. Spruce Knob provides exchange and exchange access services to approximately 1,082 lines in West Virginia. Each of the Petitioners is a rural telephone company under the Communications Act of 1934, as amended. Each of the Petitioners use Communications Data Group ("CDG") as their billing vendor. In September, 1999, each of the Petitioners requested assistance from CDG with respect to identifying what billing system software changes would be required to ensure TIB compliance. Like other carriers, the Petitioners have been concentrating efforts on addressing Year 2000 issues.

On November 3, 1999, CDG informed the Petitioners that compliance with the TIB Requirements would be an issue. As soon as this information was received, the Petitioners immediately investigated with CDG what specific TIB issues needed to be addressed, and what billing system software upgrades were required for compliance with the TIB Requirements. An estimated delivery date for the necessary software will, according to CDG, be provided soon. Once these upgrades are received, the Petitioners will then undertake appropriate testing to

ensure that such compliance is achieved. However, because of the need to comply with other TIB rules by April 1, 2000,⁶ the Petitioners also request a waiver until that date to comply with the TIB Requirements.⁷

As explained below, the practical problems and existing billing software system limitations confronting the Petitioners associated with implementing the TIB Requirements make compliance by the November 12, 1999 effective date infeasible.⁸ The need for the waiver of the TIB Inquiry Contact Requirement arises from the billing services that the Petitioners render to casual calling and alternate service providers (collectively referred to as "AOS providers"), *i.e.*, carriers other than the presubscribed "1+" carrier of the customer.⁹ Specifically, the Petitioners receive data from the AOS provider's clearinghouse, which, in turn, are aggregated in one section of the Petitioner's end user bill. This bill section may identify one or, at times, several different AOS providers based on the customer's decision to make a casual call or to use an alternative service provider in a given billing cycle. The charges that the Petitioners receive

⁶ See 64 Fed. Reg. 55163 (Oct. 12, 1999); see also Public Notice, DA 99-2030 (Sept. 30, 1999) and Public Notice, DA 99-1789 (Sept. 2, 1999).

⁷ The Petitioners will supplement this filing once CDG confirms a delivery date for the software required by Petitioners to comply with the TIB Requirements.

⁸ See n. 6, *supra*.

⁹ Although the Petitioners typically have the authority to issue credits to customers for AOS charges, the AOS providers may, independently, seek payment of those charges from customers. Moreover, the Petitioners note that they are not "fully authorized to resolve consumer complaints on the carrier's behalf." 47 C.F.R. § 64.2401(d). Accordingly, the Petitioners request this waiver of the TIB Inquiry Contact Requirement. The Petitioners note that, in their experience, customer inquiries regarding AOS provider charges are minimal.

are sorted by customer, by date and time of that customer's usage, and by AOS provider.¹⁰ The Petitioners' existing billing system software does not, however, place the AOS service provider's toll free number on the bill. Accordingly, the Petitioners' existing software would require modifications to accommodate varying levels of screening and identification of an AOS provider, and to provide for the contact number of the AOS provider. These demands would, in turn, affect the processing time associated with rendering the bill.

With respect to the need for a waiver of TIB Separate Provider Requirement, the Petitioners' existing billing systems currently aggregate all non-recurring charges and credits in the local section of the their bill. However, because the Petitioners provide "1+" billing and collection services for carriers, these carriers' non-recurring charges and credits are printed in the same section of the bill as the non-recurring charges and credits for local services offered by the Petitioners. The Petitioners note, however, that each such charge and credit is labeled by carrier. As with the software required to comply with the TIB Inquiry Contact Requirement, the Petitioners are technically incapable of placing other carrier's non-recurring charges and credits in their respective section of the bill by November 12, 1999 in order to comply with the TIB Separate Provider Requirement.¹¹

¹⁰ Based on each of the Petitioner's experience, the vast majority of its customers do not make calls carried by an AOS provider. For example, based on a representative's month data, Hardy estimates that less than approximately eight percent (8%) of Hardy's customers made an AOS provider call, or typically less than two hundred and forty (240) of the approximately 3,000 end user bills that Hardy renders in a given month. For Spruce Knob, based on a representative's month data, less than approximately two percent (2%) of its customers made an AOS provider call, or typically less than twenty-one (21) of the approximately 1,082 end user bills that Spruce Knob renders in a given month.

¹¹ See TIB Order at para. 31.

II. Good Cause Exists for and the Public Interest will be Served by a Grant of this Limited Waiver

Based on these facts and circumstances, the Petitioners respectfully submit that good cause exists for a grant of this limited waiver, and that the public interest will be served by such action. As demonstrated herein, the Petitioners' software vendor will not be able to develop the necessary software required to meet the TIB Requirements by this date. Moreover, even assuming the availability of the software upgrades, the Petitioners would not be able to successfully test such upgrades by November 12, 1999. The Petitioners anticipate, however, that compliance with the TIB Requirements should be possible by April 1, 2000. Accordingly, for the reasons stated, good cause exists for this waiver.¹²

The Petitioners also respectfully submit that the public interest would be served by grant of this request. First, the Commission has recognized the need to balance the implementation of new regulatory directives which affect computerized systems with on-going Year 2000 activities.¹³ The software changes required by the Petitioners clearly fall into this Commission-defined category. The Commission's concerns regarding utilization of its Year 2000 Policy

¹² "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ See In the Matter of Minimizing Regulatory and Information Technology Requirements That Could Adversely Affect Progress Fixing the Year 2000 Date Conversion Problem, Year 2000 Network Stabilization Policy Statement, FCC 99-272, released October 4, 1999 ("Year 2000 Policy Statement") at para. 15.

Statement to "forestall" or "roll back" disfavored regulations, or use this policy for purposes of competitive advantage"¹⁴ are not applicable here. The Petitioners are working with CDG toward TIB compliance and seeks only a limited extension of time that is otherwise consistent with the underlying objectives which justified the Commission-prescribed compliance date of certain other TIB rules. Accordingly, there is no basis to conclude that the Petitioners are attempting to "forestall" or "roll back" disfavored regulations. In addition, there is no "competitive advantage" associated with this request. A grant of this waiver does not affect a competitor of the Petitioners; rather it allows an interim measure to be implemented that allows continuation of existing billing arrangements for other carriers in a manner consistent with the status of the overall TIB compliance efforts by the Petitioners.

Second, the Commission has already determined that the April 1, 2000 date is appropriate for implementing other TIB rules.¹⁵ Accordingly, the ability of the Petitioners to continue to work toward the April 1, 2000 implementation date for all TIB rules would ensure efficiency and continuity in the necessary enhancements of their billing system capabilities without incurring unnecessary expenditures or jeopardizing Year 2000 compliance issues.

Third, the underlying goal of the TIB Requirements -- the ability of a customer to identify a carrier and make inquiry concerning a charge -- would not be frustrated by a grant of the requested waiver. As is done today, even after the requested waiver expires, each of the Petitioners will continue to provide their local telephone number on the bill in order to allow customers to contact the Petitioners about charges. Likewise, when a customer questions an

¹⁴ Id. at para. 16.

¹⁵ See n. 6, supra.

AOS provider charge, the Petitioners will, at the customer's option, provide the AOS provider's toll free number or will seek to establish a three-way conference call with the AOS provider (or its billing clearinghouse) in order that the customer may address his/her concern about a charge. Accordingly, the goal of the TIB Requirements will be advanced. Waiver of the TIB Requirements as requested herein will merely maintain the status quo until such time as the billing system modifications are made and successfully tested, while effecting the goals of these requirements in an alternative manner.

Finally, the Petitioners note that, in the absence of this limited waiver of the TIB Inquiry Contact Requirement, their ability to bill for isolated customer-originated traffic on behalf of AOS providers would be in jeopardy. Facing the risk of non-compliance with the TIB Inquiry Contact Requirement, the Petitioners may be forced to consider terminating its billing relationship with the AOS providers. This, in turn, may increase the cost to the AOS provider of billing, thereby inhibiting the continued development of a competitive interexchange service marketplace.

Even assuming that harm to the public interest is present, that harm does not outweigh the public interest benefits arising from a grant of this request. As indicated, concerns expressed by the customers of the Petitioners regarding AOS provider charges and carriers' non-recurring charges and credits have been minimal. Moreover, the Petitioners anticipate that their experience will not change during the time that the requested waiver is in place.

III. Conclusion

Because Hardy and Spruce Knob are technically incapable of complying with the TIB Requirements by November 12, 1999, a grant of this request until April 1, 2000 should ensure

that both Petitioners can implement and successfully test the billing system software upgrades required to implement the TIB Requirements in an efficient manner, while avoiding unnecessary expense or raising additional Year 2000 compliance issues. At the same time, the consumer goals of the TIB Requirements will not be frustrated by a grant of this request. Rather, such goals will be furthered by the Petitioners as they continue to provide customer assistance and responsiveness when questions are received regarding charges from particular carriers.

Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, Hardy and Spruce Knob request a waiver of the requirements of 47 C.F.R. §§ 64.2401(a)(2) and 64.2401(d) until April 1, 2000.

Respectfully submitted,

Hardy Telecommunications, Inc.
Spruce Knob Seneca Rocks Telephone, Inc.

By



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Their Attorneys

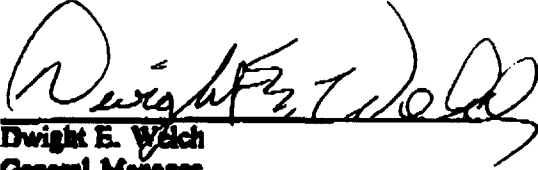
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November 5, 1999

**Declaration of Dwight E. Welch
General Manager of
Hardy Telecommunications, Inc.**

I, Dwight E. Welch, General Manager of Hardy Telecommunications, Inc. ("Hardy"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Temporary, Limited Waiver" and the information contained therein regarding Hardy is true and accurate to the best of my knowledge, information, and belief.

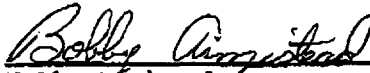
Date 11-5-99


Dwight E. Welch
General Manager

**Declaration of Bobby Armistead
General Manager of
Spruce Knob Seneca Rocks Telephone, Inc.**

I, Bobby Armistead, General Manager of Spruce Knob Seneca Rocks Telephone, Inc. ("Spruce Knob"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Temporary, Limited Waiver" and the information contained therein regarding Spruce Knob is true and accurate to the best of my knowledge, information, and belief.

Date 11/5/99


Bobby Armistead
General Manager

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Petition for Temporary, Limited Waiver" of Hardy Telecommunications, Inc. and Spruce Knob Seneca Rocks Telephone, Inc. was served on this 5th day of November, 1999 by hand delivery to the following parties:



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